

DELTA PROTECTION COMMISSION

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December 15, 1995

To: Governor Pete Wilson and Members of the State
Legislature

From: Patrick McCarty, Chairman

Subject: 1995 End of Year Report on Delta Protection Commission
Activities

Section 29780 of the Delta Protection Act (Act), requires the Delta Protection Commission (Commission) to submit an annual report describing the progress in achieving the objectives of the Act. The report is to include an evaluation of the effectiveness of the regional plan in preserving agricultural lands, restoring Delta habitat, improving levee protection and water quality, providing increased public access and recreational opportunities, and in undertaking other functions prescribed in the Act; an update of the regional plan, using baseline conditions set forth in the original regional plan; and the status of the environmental thresholds established by the Commission in the original regional plan.

Status of the Land Use and Resource Management Plan:

The Commission adopted the Land Use and Resource Management Plan for the Primary Zone of the Delta (Delta Plan) on February 23, 1995. Copies of the Delta Plan were distributed to Cities and Counties, special districts, and interested parties at no cost. Affected local governments include: Contra Costa County, Sacramento County, San Joaquin County, Solano County, and Yolo County; and the Cities of Pittsburg, Rio Vista, and Stockton (see Exhibit A, Map of Primary and Secondary Zones).

Local governments had six months, until August 22, 1995, to prepare analysis of their General Plans in light of the Delta Plan, and to inform the Commission of what General Plan amendments, if any, would be needed to bring the local government General Plans into conformance with the Delta Plan. Submittals were received by August 22, 1995 from Contra Costa, Sacramento, San Joaquin, Solano, and Yolo Counties, and from the Cities of Pittsburg and Stockton. The City of Rio Vista submitted a letter on August 31, 1995.

The Commission reviewed the submittals and concurred with the submittals of the City of Pittsburg, Yolo County and Solano County at the October, 1995 meeting, and concurred with the proposals of San Joaquin County and Contra Costa County at the December, 1995 meeting.

The submittal from the City of Rio Vista is incomplete. The Submittals from the City of Stockton and Sacramento County are under consideration.

Effectiveness of the Plan: (See Exhibit B, Summary of Projects Approved in the Primary Zone, 1995, for more information.)

1. Preserving Agricultural Land.

In 1995, there have been several proposals to convert land from agriculture to other uses. In keeping with the guidelines of the Act, most of the lands are being converted to restored Delta habitat (Sherman, Twitchell, Prospect, Yolo Bypass, Bouldin, Holland). Additional lands are proposed for reservoir use (Webb Tract, Bacon Island). These projects were planned before the legislation was passed.

Agricultural lands are proposed for conversion for wastewater treatment plant east of Rio Vista (Solano County) and for disposal of treated wastewater and sludge on Jersey Island (Contra Costa County). The projects were planned before the legislation was passed.

Proposals to convert agricultural lands to residential development are under consideration in Yolo County near Clarksburg and in Sacramento County near Courtland. A residential 50-lot subdivision was approved in Walnut Grove, Sacramento County, and is within the designated area for development in the unincorporated community; a 34-unit subdivision was approved on the same site in 1992.

The Commission has continued to pursue means to permanently protect agricultural lands through agricultural or conservation easements. Programs and funding have not yet been implemented in the Delta area.

2. Restoring Delta Habitat.

State and federal agencies and nonprofit groups have continued to acquire land and pursue programs to restore those lands to Delta habitat. Examples include the Yolo Bypass Wetlands project now under construction; continued acquisition in the Stone Lakes Wildlife Refuge and Cosumnes River Preserve, and on Twitchell and Sherman Islands; acquisition of Prospect Island; restoration planning work for those lands and for Little Holland Tract and Liberty Island. Total acreage to be covered by these projects is approximately 37,00 acres.

3. Improving Levee Protection and Water Quality.

The Commission has continued to participate in the Secretary for Resources' meetings to coordinate and streamline permitting associated with Delta levee maintenance. To date, the communication and working relationships among the staff of the regulatory agencies has improved, but actual achievements have been limited.

New guidelines for vegetation management upon levees has been approved and the Department of Fish and Game has signed agreements with some Reclamation Districts regarding vegetation management on specific levees. The Corps carried out levee maintenance along the Stockton Deep Water Ship Channel.

Regarding water quality issues associated with dredging issues, the Central Valley Regional Water Quality Control Board staff is preparing draft General Orders to address dredging in the Delta waterways. A waiver of standards for arsenic in dredged spoils was issued by the Regional Board to the Port of Stockton and the Corps of Engineers for maintenance dredging of the Stockton Deep Water Ship Channel.

Regarding water quality issues associated with treated wastewater and sewer sludge, the Central Valley Regional Water Quality Control Board issued a General Order covering deposition of these materials on agricultural and other lands in the Central Valley.

4. Providing Increased Public Access and Recreation Opportunities.

The Commission is studying existing recreational use in the Delta, with the Department of Boating and Waterways and Department of Parks and Recreation. While several large and small marina projects are under consideration by local governments, only three pre-existing projects and one previously-authorized project were authorized in the Primary Zone in 1995.

Several of the Delta habitat restoration projects will include a public access/recreation component, such as trails and overlooks at the Yolo Bypass Wetlands project. The Department of Parks and Recreation continues to seek funding to provide improvements at and adjacent to Brannan Island State Recreation Area. A new trails planning process is underway in eastern Contra Costa County. East Bay Regional Parks District is pursuing acquisition and planning also in eastern Contra Costa County (Big Break, Marsh Creek).

Several projects in the Secondary Zone were approved which will provide recreation improvements and public access to Delta shoreline and waterways including: Mountain House project (San Joaquin County); Spanos Golf Course (San Joaquin County); Discovery Bay West (Contra Costa County); and Willowest Marina (Bethel Island, Contra Costa County).

5. Conservation Easements.

The Commission continues to hold one conservation easement granted voluntarily by MTC Staten Ranch to the Commission in 1994 over four wildlife habitat islands, totaling 23 acres, in the South Fork Mokelumne River in San Joaquin County.

Commission Sunset Date:

The Delta Protection Commission was created as a regional agency charged with a specific task: prepare a regional land use and resource management plan and work closely with the local governments to ensure their General Plans are brought into conformance with the adopted plan. The Delta Protection Act included a timeline for carrying out this task and included a sunset date of January 1, 1997, four years after the Commission was created.

The timeline was aggressive and while the Commission and staff worked diligently to meet the required timeline, the timeline has not been met. First, it took longer than anticipated to adopt and gain approval for required regulations. Second, the Commission received an extremely large amount of public input and comment on the draft plan circulated in July of 1994. The

Commission needed additional time to ensure that all public comments were received and understood, and to make needed modifications in the draft plan to create a consensus document. Finally, while all the local governments submitted responses to the adopted plan in a timely manner this summer, the responses were in varying levels of completion and conformance. While five of the local government submittals have been approved by the Commission, three local governments have not, thus creating further delays in the process.

While the original timeline allowed for an approximately 18 month monitoring period after the General Plan amendments were adopted, under the current sunset date of January 1, 1997, there will be only a short period for monitoring.

On December 14, 1995, the Commission addressed the issue of the Commission's sunset date. After holding three public meetings in the Delta and holding a public hearing at the December meeting, the Commission voted to seek a two year extension of its sunset date to allow completion of the Commission's mandated tasks.

The Commission and staff will be approaching members of the Legislature to support legislation to authorize this short time extension. In addition, the Commission will be requesting the support of the Governor.

Pending Lawsuits:

The Commission has been sued by Bio Gro, a division of Wheelabrator Industries, over Utilities and Infrastructure Policy P-3. P-3 precludes placement of sewage effluent and sewage sludge in the Primary Zone of the Delta. Bio Gro filed one suit in the Sacramento County Superior Court in April 1995, alleging that the Commission's adoption of P-3 was procedurally defective. Bio Gro simultaneously commenced the other action in U.S. District Court for the Eastern District of California, challenging Policy P-3 on various constitutional grounds.

On November 14, 1995, the Sacramento County Superior Court issued its preliminary ruling, finding that: a) Bio Gro had standing to sue the Commission on the ground that Policy P-3 constituted an "underground regulation," despite the fact that Bio Gro hadn't raised that argument before the Commission; b) Policy P-3 constitutes a "regulation" under the state Administrative Procedure Act; c) the Delta Protection Act contains no express exemption from the APA's requirements, and the court would not imply such an exemption; and d) Policy P-3 may not be implemented without the Commission first undertaking additional hearings and procedures in accordance with the APA. At press time, the Superior Court had not yet finalized its ruling.

On December 1, 1995, the federal District Court decided that it would hold Bio Gro's federal lawsuit in abeyance, pending a final resolution of Bio Gro's state court litigation. Earlier, the California Farm Bureau had requested that the district court allow the Bureau to participate in the litigation as amicus curiae (friend of the court) in support of the Commission.

Actions Supporting the Goals of the Act:

The Commission continued to proceed on several fronts with activities and actions which promote the goals and programs outlined in the Act:

- * The Commission participated in a grants program with Ducks Unlimited. The grants are to provide wetland restoration on private lands in the Delta. Grants went to several duck clubs in the Yolo Bypass.
- * The Commission supported Coastal/Shoreline Clean Up Day in the Delta area.
- * The Commission helped sponsor a research project with Ducks Unlimited, the Contra Costa Vector Control District, and the San Joaquin Vector Control District to study seasonal flooding of agricultural lands for waterfowl habitat and the impacts on production of mosquitoes and other insects. The purpose of the research project is to develop new "best management practices" for seasonal flooding of agricultural lands.
- * The Commission acts as sponsor for the San Francisco Estuary Project's regional meetings in the Delta to forward the goals and programs in the Comprehensive Conservation and Management Plan for the Bay and Delta.
- * The Commission is working with two consultants to prepare and manage a geographic information system (GIS) to monitor activities and land use changes in the Delta as directed by the Act. This information will be available to the public in the Commission's office and through the Internet.
- * The Commission contracted with Department of Parks and Recreation to prepare a statistically valid recreational use survey of the Delta. The survey will be completed in Spring of 1996.
- * Starting in March, staff prepared a monthly project monitoring memo which lists and describes all pending projects (local, state, and federal projects) in the Delta area.

- * The Commission considered taking action regarding regulation of recreational boating activities during periods of unusually high water in order to protect Delta levees from unwarranted erosion. The Commission determined the local governments are the most appropriate parties to carry out these responsibilities and forwarded the information developed by the Commission to local governments to carry out.
- * The Commission held public hearings and adopted a resolution regarding the San Luis Drain and release of agricultural wastewaters into the Delta. The Commission urged a resolution of the issue in a manner that protects the environmental values of the Delta and promised to participate in future hearings on the issue.
- * Recognizing that the levees are the key to supporting land uses in the Delta, the Commission adopted positions on Delta levees supporting full restitution of levee repair claims from the floods of 1982, 1983, and 1986; supporting a program to fund long-term levee maintenance; supporting Corps of Engineers planning programs, and supporting the Corps of Engineers use of imported dredged material for levee maintenance.

Appeals:

No local government decisions were appealed to the Commission in 1995.

Commission Members:

The Commission is made up of 19 members designated in the Act representing six State agencies, five Delta counties, three councils of governments, and five reclamation and water district representatives. Patrick McCarty, who represents the Central Delta Water Agency, was elected Chair in March. Sacramento City Councilmember Heather Fargo continues to serve as Vice Chair. A complete roster of the Commission is attached (see Exhibit C).

Subcommittees:

The Commission has created several subcommittees to address specific tasks and issues:

Operations and Administration Subcommittee has been combined with the Budget and Finance Subcommittee to provide oversight: Commissioners McCarty, Calone, Sekelsky, Salmon, Simas, McGowan, Ferreira, and Yates.

Legislative Subcommittee provides advice on proposed and pending legislation: Commissioners Torlakson, Curry and Fargo.

Levee Subcommittee addresses special concerns associated with Delta Levees: Commissioners Torlakson, Potter, Broddrick, Curry, Mello, and McCarty.

Recreation Users Study Oversight Subcommittee works on the survey project: Commissioners Nottoli, Murphy, Curry, and public members.

San Luis Drain Subcommittee appointed to discuss the San Luis Drain issue: Commissioners Torlakson, Potter, Yates, Broddrick, and Thomson.

Litigation Subcommittee appointed to negotiate lawsuits on behalf of the Commission; Chairman McCarty and Commissioner Potter.

Administration:

The Commission offices are located in Walnut Grove in Sacramento County. Margit Aramburu is the Executive Director, with Debra Eddy as full time support staff. Supplemental assistance is provided by part-time student assistants. Richard Frank, Supervising Deputy Attorney with the Attorney General's Office, provides legal support for the Commission. Administration support is provided by the Department of Conservation. Operating costs of the Commission are approximately \$14,000 per month. The Commission is funded by funds from three special funds; no general funds are used to support the Commission.

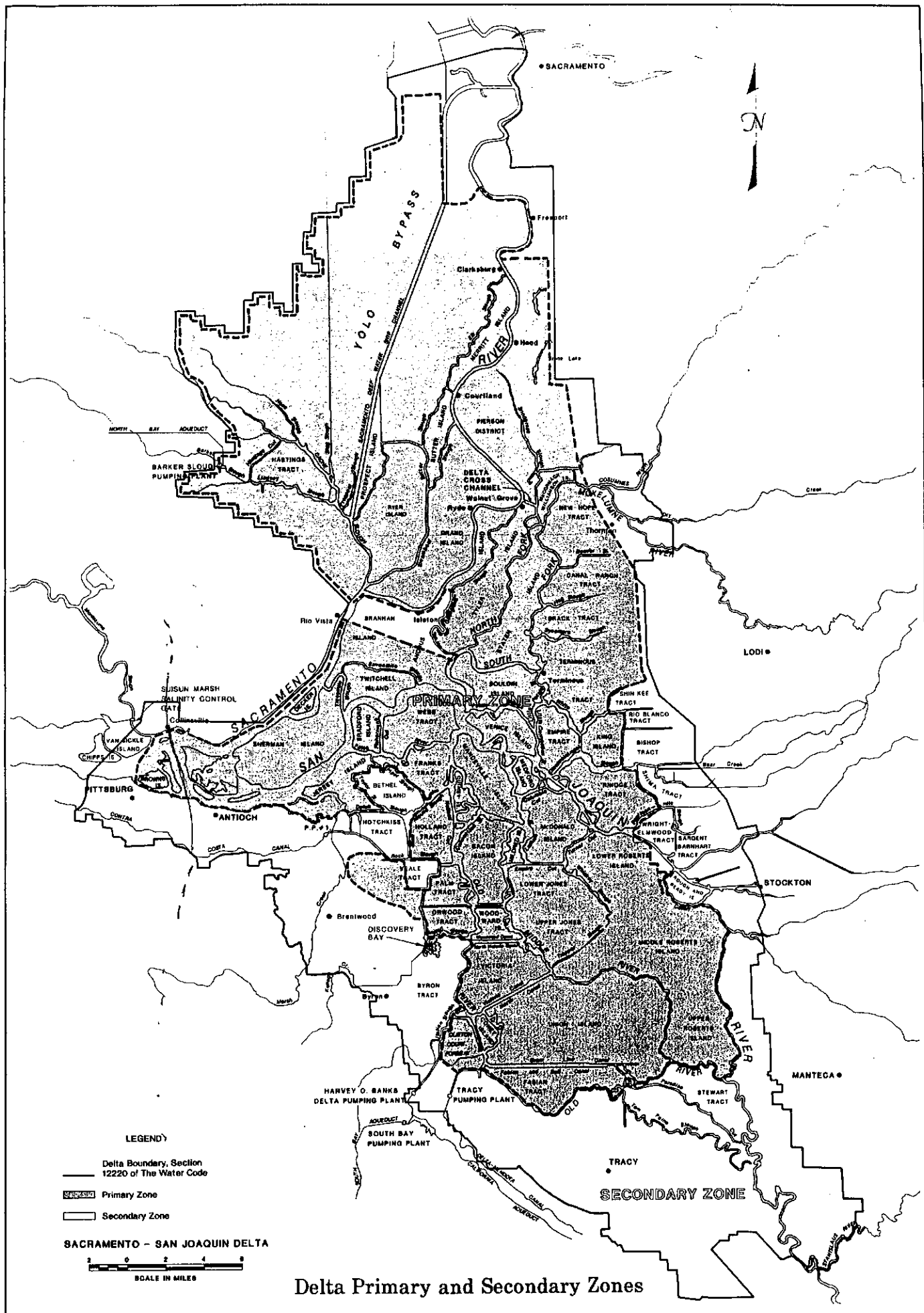


Exhibit B

Summary of Projects Approved in the Primary Zone in 1995:

PROJECTS APPROVED BY THE FIVE COUNTIES:

Subdivisions:

1. Subdivision; Mandeville Island, San Joaquin County
5,290 acres into 7 parcels
5/95
2. Hom Subdivision; Knightsen, Contra Costa County
70 acres into 5 parcels
6/95
3. River Island Land Company; Tyler Island, Sacramento County
873 acres into 5 parcels
4/95
4. Ojai Ranch Co./Holland Ranch; Yolo County
1,300 acres into 2 parcels (both to be in Williamson Act
contracts)
7/95
5. Spaletta-Reynolds; McDonald Island, San Joaquin County
1,079 acres into two parcels (one is 10 acres)
8/95
6. The Willows; East Walnut Grove SPA, Sacramento County
7.28 acres into 50 lots, where 34 were approved in 1992
11/95

Recreation Projects:

1. Boat Storage/Repair (L. Coulter)
(Pre-existing project; needed use permit)
Walnut Grove Road, San Joaquin County
8/95
2. Perry's Boat Harbor and Dry Dock Co.; Brannan-Andrus Island,
Sacramento County
(Pre-existing project; needed use permit)
24 acres; 122 berths
1/95
3. Delta Windsurf Co.; Sherman Island, Sacramento County
(Pre-existing project; needed use permit)
One pier
2/95
4. Harbor Marina Brannan; Andrus Island, Sacramento County
Resubmission of Use Permit issued in 1987.
35 acres; 409 berths
12/95

Other Projects:

1. O'Neill/MRF Lands Quarry Permit; Holland Tract, Contra Costa County
Remove up to 450,000 cubic yards of sand from 190 acres;
Regrade for agricultural use and 10 acre pond.
10/95

OTHER PROJECTS IN THE PRIMARY ZONE IN 1995 (STATE, FEDERAL, OR NON-PROFIT GROUPS):

Habitat Projects/Studies:

1. Acoustic Fish Barrier, Year II (DWR)
Georgiana Slough, Sacramento County
6/95
2. Yolo Basin Wetlands (USFW)
Yolo Bypass, Yolo County
3,200 acres
work started 6/95
3. Final Report; Western Delta Islands Reconnaissance Study
(Corps)
Jersey, Twitchell, Webb; Contra Costa, Sacramento Counties
12,500 acres
5/95
4. Prospect Island Fish and Wildlife Habitat Restoration Study;
Reconnaissance Report (Corps)
Prospect Island, Solano County
1,316 acres
4/95

Other Projects:

1. Delta Wetlands; Revised Draft Environmental Impact Report
Bouldin Island and Holland Tract: Mitigation, Habitat,
Private Recreation
Webb Tract and Bacon Island: Reservoir, Private Recreation
approx. 20,000 acres
9/95
2. Department of Fish and Game;
Delta Levees Master Environmental
Assessment
11/95
3. State Water Resources Control Board;
Water Quality Control Plan for
the San Francisco Bay/Sacramento-
San Joaquin Delta Estuary.
5/95

PRIVATE PROPERTY ACQUIRED BY PUBLIC AGENCIES:

1. Department of Water Resources for
Interim North Delta Program
South of Hood, Sacramento County
122 acres
8/95
2. Bureau of Reclamation for
Fisheries Habitat Restoration
Prospect Island, Solano County
1,316 acres
1/95
3. U.S. Fish and Wildlife Service for
Stone Lakes Wildlife Refuge, Sacramento County
Lewis Property 405 acres
Lodi Gun Club 300 acres
Gallagher 45 acres
Agri-Versified 72 acres

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*Resigned November, 1995

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